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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ROMAN CATHOLIC BISHOP OF  
ORANGE,

Plaintiff and Respondent,

v.

PATRICIA JEAN NICHOLS,

Defendant and Appellant.

G055023

(Super. Ct. No. 30-2014-00712885)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Michael McCartin, Judge. Affirmed.

Patricia Jean Nichols, in pro. per., for Defendant and Appellant.

Callahan, Thompson, Sherman & Caudill, Lee A. Sherman and Kyle R. DiNicola for Plaintiff and Respondent.

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This is an appeal from an order renewing a workplace violence restraining order by the Roman Catholic Bishop of Orange (the Church), with respect to Father Augustine Puchner and other individuals, against Patricia Jean Nichols (also known as Heaven Nichols). In an 82-page brief and a record of 2,768 pages, Nichols, in propria persona, offers seven separate reasons why the order should be reversed, none of which have any legal merit whatsoever. She also argues the trial court should not have granted the Church's motion to declare her a vexatious litigant in 2016, an argument expressly considered and rejected in Nichols's prior appeal in this matter. (*Roman Catholic Bishop of Orange v. Nichols* (Feb. 16, 2018, G054149 [nonpub. opn.] (*Nichols I*)).) Accordingly, we affirm the order.

## I FACTS

We need not delve into the facts at any length. As we noted in *Nichols I*, the Church applied for a workplace violence restraining order against Nichols in 2014 (Code Civ. Proc., § 527.8, subd. (k)(1)).<sup>1</sup> (*Nichols I, supra*, G054149.) Among other things, she leveled accusations of wrongdoing and misconduct against two priests, Father Augustine Puchner and Father Bruce Patterson. She also began harassing staff members, including a staff member named Christina Ford.

If Nichols filed an opposition to the petition, it is not included in the record. The restraining order was granted on May 6, 2014. Less than a month later, she filed a motion to modify or terminate the order, submitting a declaration that accused various people associated with the Church of misconduct and wrongdoing against her. She claimed Father Puchner touched her on the breasts without permission, but that she later “forgot about” this because he “stopped doing it.” (*Nichols I, supra*, G054149.) The

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<sup>1</sup> Subsequent statutory references are to the Code of Civil Procedure.

court issued an amended order, identifying Father Puchner, Ford, and Father Godfrey Bushmaker as protected persons. Nichols was required to refrain from harassment and stay 100 yards away from the protected persons, as well as from various locations.

(*Nichols I, supra*, G054149.)

Over the course of the following months, Nichols filed various petitions and motions, seeking (again) to modify or terminate the order, asking for a restraining order against Ford, and seeking to subpoena records, all of which were ultimately unsuccessful. She also filed a small claims case against Father Puchner and issued multiple subpoenas in connection with that action, similar to subpoenas that had already been quashed by the court considering the various filings relating to the restraining order. In 2016, on the Church's motion, and vigorously opposed by Nichols, the court declared Nichols a vexatious litigant subject to a prefilings order. We affirmed the court's order in February 2018. (*Nichols I, supra*, G054149.)

In May 2017, the Church filed a request to renew the restraining order. The request was supported by a declaration from Father Puchner, noting the obsessive quality of Nichols's multiple attempts to terminate the restraining order. Puchner also declared that Nichols resided in a van a couple of blocks away from the church where he served. He was "fearful and concerned, because the current restraining order against Nichols expires on May 6, 2017. Based on Nichols conduct and prior history, I formed the opinion that the restraining order is the only thing keeping her from entering the church and resuming her harassing activities and false accusations . . . ." Further, he stated that "Nichols' ongoing and pervasive conduct has done nothing but harass and threaten me, the church staff, and parishioners such that we are fearful of the expiration of the current restraining order."

Again, if Nichols filed an opposition to the motion, it is not in the record. The court granted the motion, extending the order through May 5, 2020. Nichols now appeals.

## II DISCUSSION

### A. *Fundamentals of Appellate Procedure*

“It is a fundamental principle of appellate review that the factual findings of the trial court are presumed correct. [Citations.] . . . In the absence of a contrary showing in the record, all presumptions in favor of the trial court’s action will be made by the appellate court.” (*Construction Financial v. Perlite Plastering Co.* (1997) 53 Cal.App.4th 170, 179.) It is the appellant’s burden to show error. (*Virtanen v. O’Connell* (2006) 140 Cal.App.4th 688, 710.) Error must be prejudicial to require reversal. “‘The burden is on the appellant in every case to show that the claimed error is prejudicial . . . .’” (*In re Marriage of McLaughlin* (2000) 82 Cal.App.4th 327, 337.)

It is also the appellant’s duty to comply with the California Rules of Court, a duty Nichols has failed in rather spectacularly. She grossly overdesignated the record, which is sanctionable conduct. (Cal. Rules of Court, rule 8.276(a)(2).) She frequently fails to “present argument and authority on each point made” (*County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 591; Cal. Rules of Court, rule 8.204(a)(1)(B)), and to cite to the record to direct the court to the pertinent evidence or other matters in the record that demonstrate reversible error (Cal. Rules of Court, rule 8.204(a)(1)(C)); *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115). Accordingly, many of her arguments either lack any support, are waived, or both.

### B. *Scope of this Appeal*

Our review in this appeal is limited to the renewal order only. “At the point where a protected party seeks a renewal of a restraining order and the restrained party has either failed to appeal . . . or has lost on appeal, the restrained party cannot challenge the findings and evidence underlying that original order nor the validity of that order.” (*Cooper v. Bettinger* (2015) 242 Cal.App.4th 77, 92 (*Cooper*).) As noted above, in

*Nichols I*, the restraining order was not before the court, only the vexatious litigant order. (*Nichols I, supra*, G054149.) Accordingly, as she failed to appeal the original order, and she cannot now challenge that order’s validity or the evidentiary basis of the underlying facts.

### *C. Relevant Law and Standard of Review*

Section 527.8 was adopted in 1994, when the Legislature enacted the Workplace Violence Safety Act. (Stats. 1994, ch. 29, § 1.) The provision allows an employer to seek an order enjoining a party from attacking or unlawfully threatening its employees. (*City of San Jose v. Garbett* (2010) 190 Cal.App.4th 526, 536.) Pursuant to section 527.8, subdivision (k)(1), upon noticed motion and in the discretion of the court, such orders are subject to a three-year renewal period.

This court reviews the renewal order to determine whether the factual findings are supported by substantial evidence. (*City of San Jose v. Garbett* (2010) 190 Cal.App.4th 526, 538.) “[W]e have no power to judge . . . the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom.” (*Ames v. Ames* (1959) 168 Cal.App.2d 39, 40.) “Accordingly, we resolve all factual conflicts and questions of credibility in favor of the prevailing party, and draw all reasonable inferences in support of the trial court’s findings.” (*City of San Jose v. Garbett, supra*, 190 Cal.App.4th at p. 538.)

### *D. Nichols’s Arguments*

#### *1. Date of the Renewal Order*

Nichols’s first claim is that the original restraining order was “under appellate review” at the time the renewal order was signed. (Capitalization and boldfacing omitted.) First, that is incorrect. As Nichols’s opening brief in that case

stated, her appeal was “with regard to the vexatious litigant judgment . . . entered on September 30, 2016.” Thus, there is no evidence that the original restraining order was under review when the renewal order was entered (or that it was ever appealed at all).

Second, Nichols offers no legal authority supporting her argument. She fails to discuss the relevant law, or to explain why an appeal of a vexatious litigant order entered as part of an action runs afoul of the general rule staying certain trial court actions, but permitting others, during pendency of an appeal. (See, e.g., § 916, subd. (a).) Even if she was somehow correct that the renewal order should not have been signed while the appeal from the vexatious litigant order was pending, she fails to argue how she was prejudiced, given that the court could certainly have renewed the order after *Nichols I* was affirmed. (*In re Marriage of McLaughlin, supra*, 82 Cal.App.4th at p. 337.) The remaining contentions (really, statements of fact) she offers in this section are not legal arguments, and not supported by any authority at all.

## *2. Service of Original Order*

Nichols, without record references, next argues the original restraining order was improperly served. Any defect in service of the original order had to be raised in an appeal from that order, however. (*Cooper, supra*, 242 Cal.App.4th at p. 92.) Further, she fails to demonstrate how this original defect in service prejudiced her with respect to the renewal order. (*In re Marriage of McLaughlin, supra*, 82 Cal.App.4th at p. 337.)

## *3. Purported Fiduciary Breach*

Next, in a rambling argument, Nichols contends that the court erred, in 2014, by failing to take judicial notice of the fact that the relationship between Nichols and Father Puchner was “fiduciary” in nature. First, this is entirely irrelevant to the issue of whether a restraining order was appropriate. Second, Nichols was required to litigate

any such issue in an appeal from the original restraining order. (*Cooper, supra*, 242 Cal.App.4th at p. 92.)

#### *4. Credibility Determinations*

Nichols next argues that “the court erred by weighing the credibility of plaintiff’s declarations in opposition to the motion to remove a restraining order due to obstruction of justice.” (Capitalization and boldfacing omitted.) She cites to her own 2015 declaration in support of this argument, and appears to be referring to one of the several motions she filed around that time to terminate the original restraining order. As we noted above, we cannot review anything concerning the original order, and the time to review the court’s orders on any of her motions has long since expired. (*Cooper, supra*, 242 Cal.App.4th at p. 92.) She does not offer any pertinent arguments about the renewal of the restraining order in this discussion, and we need not consider it further.

#### *5. Vexatious Litigant*

Nichols next argues that the court erred by designating her as a vexatious litigant in 2016. This issue, however, was resolved in the prior appeal. “[W]e find no abuse of discretion in the trial court’s issuance of this vexatious litigant order.” (*Nichols I, supra*, G054149.) She cannot relitigate this issue.

#### *6. Laws Regarding Sexual Harassment and Conspiracy*

Nichols contends “the court erred by failing to apply the laws regarding sexual harassment and conspiracy.” (Capitalization and boldfacing omitted.) She offers general arguments about the laws of sexual harassment, and a citation to California law on conspiracy. She then claims that, at some unspecified time, Father Puchner and Father Patterson “as authority figures, approached [her], and interacted in a sexual fashion as a condition for working at the church and attending church services.” The two documents

she cites to in the record in support of this assertion are the prefiling order related to her vexatious litigant status, and her own declaration in support of the small claims subpoena she filed in 2016. She goes on to argue there was a conspiracy to sexually harass her.

Even if this was in some way related to the issuance of the renewal order, Nichols offers no legal argument as to why a restraining order cannot be issued or renewed if there are allegations of sexual harassment. Accordingly, we find this argument without merit. (*County of Sacramento v. Lackner*, *supra*, 97 Cal.App.3d at p. 591; Cal. Rules of Court, rule 8.204(a)(1)(B).)

### 7. *Hearings*

Nichols next claims that “the court erred by setting hearings for review, misleading [her] into believing the court wanted additional evidence for the review hearings . . . .” (Capitalization and boldfacing omitted.) In sum, she complains about hearings in 2015 that were continued. In addition to offering no legal argument, and no argument demonstrating prejudice, this, again, has nothing to do with renewal of the restraining order, and we cannot consider it further. (*Cooper*, *supra*, 242 Cal.App.4th at p. 92; *In re Marriage of McLaughlin*, *supra*, 82 Cal.App.4th at p. 337; *County of Sacramento v. Lackner*, *supra*, 97 Cal.App.3d at p. 591.)

### 8. *Motion to Strike “Fiduciary Breach Evidence”*

Nichols’s final argument is that the court erred by denying her motion to strike all of the evidence offered by the Church “even after proving several fiduciary breaches.” (Capitalization and boldfacing omitted.) She does not tell us when this motion was made, but she cites to a page in the opposition to a 2014 motion to terminate the original order. She does not cite to anything related to the renewal, and we therefore infer that whatever her exact complaint might be, it does not relate to the renewal order, and therefore we cannot consider it. (*Cooper*, *supra*, 242 Cal.App.4th at p. 92.) Further,



she fails to offer a legal argument regarding why the evidence was inadmissible, or why she was so prejudiced that reversal was required. (*In re Marriage of McLaughlin*, *supra*, 82 Cal.App.4th at p. 337; *County of Sacramento v. Lackner*, *supra*, 97 Cal.App.3d at p. 591.)

*E. Good Cause for Renewal*

The Church argues there was good cause to renew the order. Based on the undisputed evidence before us, the order was supported by substantial evidence. No showing of further violence or threats is required to renew a workplace violence restraining order. (§ 527.8, subd. (k)(1).) Considering Father Puchner's declaration and Nichols's apparently unrelenting campaign to terminate the order, we agree the court had good cause to renew it.

III

DISPOSITION

The order is affirmed. The Church is entitled to its costs on appeal.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.